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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,501	03/19/2001	Prem S. Paul	201503US55XD	1105

7590

05/14/2003

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Alexandria, VA 22313-1404

EXAMINER

WORTMAN, DONNA C

ART UNIT	PAPER NUMBER
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1648

22

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.:

09/810,501

Applicant(s)

PAUL ET AL.

Examiner

Donna C. Wortman, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

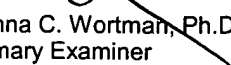
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 30 and 31.

Claim(s) withdrawn from consideration: 1-29 and 32-38.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Donna C. Wortman, Ph.D.
Primary Examiner
Art Unit: 1648

The information disclosure statement filed 18 April 2003 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

The proposed amendment after final dated 18 April 2003, does not represent a complete reply because, as previously noted (page 5, Paper No. 19, mailed 24 January 2003), this application contains claims 1-29 and 32-38 drawn to an invention nonelected with traverse in Paper No. 14. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The proposed amendment after final will not be entered because it raises at least new matter issues under 35 USC 112, first paragraph, because the proposed claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Although Applicant has pointed out various portions of the specification that Applicant asserts provide support for the proposed amendment and the proposed new claims, it is not apparent that, when taken in context, Applicant had possession of pairs of primers that hybridize with genomic polynucleic acids from deposited Iowa virus strains but not with Lelystad virus, and/or additional pairs of primers that hybridize equally well with Applicant's Iowa virus strains and Lelystad virus. Further, proposed new claims 39 and 40 raise new issues since no claims to a kit comprising a pair of primers that hybridize equally well with

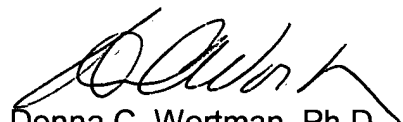
Art Unit: 1648

Applicant's Iowa virus strains and Lelystad virus were presented before final rejection; such claims would require new consideration and/or search of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna C. Wortman, Ph.D. whose telephone number is 703-308-1032. The examiner can normally be reached on Monday-Thursday, 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Donna C. Wortman, Ph.D.
Primary Examiner
Art Unit 1648

dcw
May 13, 2003